not think it can be said that the appellant was not conscious of the statement which he made in his application. It is true that the application was filled in by a petition writer, but it must be assumed that the petition writer filled in such particulars as were given to him by the appellant. I believe, therefore, that it would be correct to say that the appellant did a conscious act when he obtained the requisite form of application, another conscious act when he got some other man to fill it up for him and yet another conscious act when he affixed his signature on the application at the Registration Office. He must have known, even if his own story is to be believed *in toto*, that the form which he had signed contained a number of statements of some sort or other having something to do with his application for a Citizenship Certificate, and he also knew that the form which he signed was to be presented to the proper registration authority. To that extent it would be true to say that the Magistrate was right in coming to the conclusion that the appellant was aware of the statement with which he was charged.

Apart from showing that the statement was consciously made, the prosecution had to prove that the appellant knew that the statement which he had made with regard to his date of birth was false. This, to my mind, they failed to prove. In any event, there was the evidence of the appellant that he got his correct date of birth long after the Certificate of Citizenship was issued to him. He was not asked when he first made the application to produce any document in relation to his date of birth. It was only at the suggestion of a clerk at the Registration Office that he took the trouble to procure for himself some documentary evidence from India about his birth. In the circumstances I think there can be no doubt that on the date of his application the appellant genuinely believed that the date of his birth as shown in the Identity Card was his correct date of birth. If that was so, I do not see how it can be argued that the appellant knew on the date of his application that his statement was false. This is a point which in my opinion the learned Magistrate failed to consider, and it is for this reason that I think that the conviction of the appellant should be set aside. The appeal is allowed, the conviction and sentence of the accused quashed and the fine, if paid, must be refunded to the appellant.

Appeal allowed.

Solicitors:—*Braddell & Ramani; Kaher Singh & Karam.*

GOH LIAN HOCK & ANOR. v. REGINA

[A.Cr.J. (Wee Chong Jin C.J.) June 12, 1963]

[Singapore — Magistrate's Appeal Nos. 38 & 39 of 1962]

Penal Code, ss. 392, 394, 397—Charge of voluntarily causing hurt when committing robbery—Charge reduced to one of robbery—Evidence adduced at trial that one of the appellants was armed with knife—Raising of offence from one under s.394 to that under s.397—Criminal Procedure Code (Cap. 132).

Criminal Procedure—Jurisdiction in respect of "offence"—Criminal Procedure Code (Cap. 132), ss. 10 & 177.

The appellants were charged with having committed an offence under section 394 of the Penal Code. At the close of the prosecution case the charge against the appellants was amended to one under section 392 and after their defence was called they were found guilty on the amended charge. The main ground of appeal was that the learned District Judge had no jurisdiction to proceed with the trial after the admission of evidence that one of the appellants was armed with a knife in that such evidence added an element which raised the offence from one under section 394 to one under section 397 of the Penal Code, an offence which the District Court had no jurisdiction to try under section 177 of the Criminal Procedure Code.

Held: although evidence was adduced in the District Court to support a charge under section 397, that fact alone in no way affected the jurisdiction of the District Judge in proceeding to deal with the charge before him. *Bapoo* v. *R.*[1] followed.

Case referred to:—

(1) *Bapoo* v. *Rex* [1935] M.L.J. 18.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Tan Wee Kian (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: In this appeal both appellants are appealing against their conviction by the First Criminal District Judge on an amended charge of robbery under section 392 of the Penal Code.

At the commencement of the trial the appellants were charged together with another person with having committed an offence under section 394, the charge being as follows:—

"That you, (1) Goh Liang Hock (2) Lee Kiap Seng (3) Au Hing Loong, on or about the 4th day of December 1961 at about 23.30 hrs. at Bartley Road, Singapore committed robbery of a wrist watch and a gold ring worth $100 in the possession of one Chan Yam Yeong and at the time of committing the said robbery one of you voluntarily caused hurt to the said Chan Yam Yeong and you have thereby committed an offence under section 394, Cap. 119".

At the close of the case for the prosecution the other accused person was acquitted and discharged but the charge against the appellants was amended to one of robbery under section 392 and they were called upon to make their

defence on the amended charge. At the conclusion of the trial the appellants were both found guilty on the amended charge.

The main ground of appeal was that the learned District Judge had no jurisdiction to proceed with the trial after the admission of evidence that one of the appellants was armed with a deadly weapon, to wit, a knife, in that such evidence added an element which raised the offence from one under section 394 to one under section 397 of the Penal Code, an offence which a District Court had no jurisdiction to try.

The appellants were first brought before a Magistrate's Court on the 7th December 1961 and were charged with having committed an offence under section 397 i.e. of armed robbery which necessitated under the Criminal Procedure Code a Preliminary Inquiry it being an offence triable only by the High Court.

On the date fixed for the hearing of the Preliminary Inquiry before a Magistrate's Court the charge was reduced to one under section 394, an offence triable by a District Court and accordingly the case was transferred from the Magistrate's Court to the First Criminal District Court and there the appellants were charged before the District Judge under section 394.

It will be seen therefore that when the case first came before the District Judge the charge was for an offence which was properly triable by the District Judge. At the trial the evidence of complainant was that one of the three persons who robbed him held a sharp object against his back and the evidence of the complainant's companion was that she saw the hand of one of the three robbers behind the complainant, she saw the reflection of light on metal and that it was a knife.

Counsel for the appellants contends that when the evidence was given that one of the robbers was armed with a knife the District Judge was obliged under the provisions of section 177(2) of the Criminal Procedure Code to stay proceedings and order the accused persons to be brought before a Magistrate's Court with a view to the committal of the accused persons for trial by the High Court. His argument is that on such evidence an offence under section 397 of the Penal Code would appear to have been committed and that therefore by virtue of section 10 of the Criminal Procedure Code, which confers jurisdiction in respect of "offences" but not "charges", notwithstanding that the charge before the District Judge was one under section 394 of the Penal Code, the accused persons could only be tried by the High Court.

The relevant provisions of section 10 and section 177 of the Criminal Procedure Code are as follows:—

10. Notwithstanding the other provisions of this Code—

(1) any offence under the Penal Code may be tried by the High Court or by any other court by which such offence is shown to be triable in the eighth column of Schedule A to this Code;

177.—(2) In any trial before a District Court in which it appears at any stage of the proceedings that from any cause the case is one which the District Court is not competent to try or one which in the opinion of such Court ought to be tried by the High Court, or if before or during such trial application is made by the Public Prosecutor, the Court shall stay proceedings and shall order the accused to be brought before a Magistrate's Court with a view to the committal of the accused for trial by the High Court and shall record such order on the proceedings.

At the hearing of the appeal, the Deputy Public Prosecutor relied on the case of *Bapoo* v. *Rex*[1]. In that case the accused person was charged before a District Court under section 393 of the Penal Code with kidnapping a girl from the Colony of Singapore. Evidence was given at the trial in support of that charge, but the evidence went further and showed that after the girl had been kidnapped efforts were made, with success, to compel her to marry against her will. The District Judge convicted the accused on the charge under section 393 of the Penal Code and against that conviction the accused appealed to the High Court. The appeal was heard by a Court consisting of three judges and one of the contentions of counsel for that appellant was that as the evidence pointed to the commission of an offence under section 366 of the Penal Code—an offence cognizable only by the High Court—the District Judge had no jurisdiction to try the appellant on the less serious charge and that the trial was wholly illegal. This contention was rejected by the appellate Court in a judgment delivered by Huggard C.J. where he said:—

"Here the facts clearly pointed to the commission of an offence punishable under section 363 of the Penal Code, an offence cognizable by the District Court; the accused persons were duly charged before that Court with an offence under that section; and although admittedly during the course of the trial evidence was given which might have supported a charge under section 366 of the Code, which would have been cognizable only by the Supreme Court, we are of opinion that this fact in no way affected the jurisdiction of the District Judge in proceeding to deal with the charge before him."

I feel bound to follow the decision in *Bapoo's* case as being a decision of a Court of three judges specially convened to hear a Magistrate's Appeal and as a decision which would appear to have been acted on, or at least, not doubted for all these years.

Counsel for the appellants, although he also drew my attention to *Bapoo's* case, relied on a number of Indian cases. I do not feel it is necessary to deal with them in any detail as they are in my opinion distinguishable from the

case before me. In the Indian cases the complaints were laid before magistrates and where such complaints disclosed offences not triable by magistrates it was held that it was wholly illegal for magistrates to charge and try accused persons for an offence less serious than that disclosed by the complaint so as to bring the case within their jurisdiction. In any event, having had the opportunity to refer to other Indian cases on the same point, it would appear that there are other Indian decisions which conflict with those cited by Mr. Marshall.

As regards the other grounds of appeal it is sufficient for me to say that in my opinion there was ample evidence to support the findings of the learned District Judge.

The appeals are therefore dismissed and the convictions and sentences affirmed.

Appeals dismissed.

ARUNACHALAM CHETTIAR v. KOW GUAN

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) February 28, 1963]

[K.L. — F.M. Civil Appeal No. 9 of 1962]

Landlord and Tenant—Rent controlled premises—Used partly for purposes other than human habitation—Increase above standard rent accepted by tenant—Whether evidence of termination of tenancy under, s.6, Control of Rent Ordinance, 1948—Permissive nature of s.6—Election by landlord to increase rent on most favourable terms—Recovery of possession—Control of Rent Ordinance, 1956, s.12(1)(m).

The appellant was the owner of rent controlled premises of which the respondent was a monthly tenant paying a rental of $40. From March, 1948, the rent was increased to $50 a month which the tenant paid without objection for some years. In 1958 the tenant began to get into arrears of rent in consequence of which the landlord commenced proceedings to recover possession of the premises under section 12(1)(m) of the Control of Rent Ordinance, 1956. The defence was that the increase of rent in 1948 was unlawful, firstly because the contractual tenancy existing at the time had not been terminated by notice and secondly that even if the increase was lawful the amount of such increase was limited to 10% of the previous rent, i.e., $4 a month and not 25% or $10 which was the amount actually charged, and on either of these premises the respondent was not in arrears.

The learned President of the Sessions Court gave judgment for the landlord. On appeal Ismail Khan J. (*ante* p. 101) set aside the judgment of the learned President on the ground that the landlord had failed to terminate the contractual tenancy before increasing the rent and accordingly the tenant had never been in arrears. On appeal to the Court of Appeal,

Held: (1) the only reasonable inference from the evidence was that the old tenancy was terminated and a new one created;

(2) even if that inference were not justified, there is nothing in the law, in the absence of fraud or misrepresentation or mistake, which enabled the tenant to require the landlord to refund any sum he had paid in excess of the original stipulated rent;

(3) as the premises were used both for human habitation and for purposes other than human habitation, the landlord had brought himself within an alternative most favourable to himself with regard to the permitted increase which was 25% and accordingly it was not unlawful.

Observations on sections 3 and 6 of the Control of Rent Ordinance.

Cases referred to:—

(1) *Mellows* v. *Low* [1923] 1 K.B. 522.

(2) *Bird* v. *Defonvialle* 2 C. & K. 415.

(3) *Doe d. Cheny* v. *Batten* (1775) 1 Cowp. 243.

(4) *Bohari* v. *Lim How Hia* Seremban Civil Appeal No. 7 of 1956.

(5) *Labrooy* v. *Sharma* [1951] M.L.J. 127.

COURT OF APPEAL.

W. H. Sault for the appellant.

Khoo Eng Chin for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a judgment of Ismail Khan, J., allowing an appeal from a judgment of the Sessions Court at Kuala Pilah.

The appellant (to whom I shall refer as "the landlord") was the original plaintiff. He is, and has been since 14th February, 1951, the owner of shophouse premises at No: 21, Lister Road, Kuala Pilah. The respondent (whom I shall call "the tenant") is the occupier of the premises and first his father and then himself have occupied them since about 1920. At all material times the premises have been subject to the provisions of the statutes dealing with rent control.

It is common ground that originally the tenant's father obtained a monthly tenancy of the premises from the landlord's predecessor in title. The father died in 1932 and the tenancy then passed to the son. There is no evidence as to what the original rent was but prior to March, 1948, it was $40 a month payable in arrears. Then as from March, 1948, the rent became $50 a month, which the tenant paid for some years. The only evidence as to how this increase of rent came about was the following statement of the tenant:—

"Rent for premises in February 1948 was $40 and rent for March 1948 was $50. No one gave me any notice to increase the rent of $40 to $50. The rent collector came and asked me to pay an increase of $10 in the rent, and he said that if I refused to do so I will have to quit the house. It was in sometime in April 1948. When he asked for $50 rent I paid him the amount. A receipt was given to me."

In 1958 the tenant began to get into arrears with his rent and, after various demands and promises to pay, the landlord, on 11th November, 1959, gave him notice to quit at 31st December,